

**BRIEF FOR APPELLEE - DIRECTOR OF THE
UNITED STATES PATENT AND TRADEMARK OFFICE**

UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

Appeal No. 2007-1091
(Serial No. 09/910,654)

IN RE RODGER BURROWS

APPEAL FROM THE UNITED STATES PATENT AND TRADEMARK OFFICE,
BOARD OF PATENT APPEALS AND INTERFERENCES

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April 10, 2007

Representative Claim

Claim 1:

1. A method for electronically generating, storing, and retrieving airline ticket agency coupon data, comprising the steps of:

[(a)] generating agent coupon data simultaneously with the printing of an airline ticket;

[(b)] transmitting and storing said agent coupon data electronically to and in data storage apparatus;

[(c)] providing each agent coupon data with an identifier;

[(d)] storing said agent coupon data in a director/directory/image file arrangement; and

[(e)] retrieving said electronically stored agent coupon data and printing the same in the format of an agent coupon.

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RULE 47.5 STATEMENT OF RELATED CASES

(a) No other appeal from the Board of Patent Appeals and Interferences in connection with the patent application on appeal has previously been before this or any other court.

(b) There is no known related case pending in this or any other court.

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I. STATEMENT OF THE ISSUE

Whether substantial evidence supports the Board's conclusion that an artisan familiar with conventional airline ticket issuing techniques, namely computer generation and printing, would have found it obvious to electronically save the data printed on the tickets in light of industry rules permitting travel agents to save copies of airline ticket receipts on optical media like CD ROM discs rather than in hard-copy form.

II. STATEMENT OF THE CASE

On July 20, 2001, Burrows filed patent application 09/910,654, entitled "Methods and Apparatus for Electronically Storing Travel Agent

Coupons.” A30-48B.¹ After his claims were twice rejected, Burrows appealed to the Board (A210-211) and the examiner answered (A255-271). On January 25, 2005, the Board issued a decision (Board Decision I) that reversed the examiner’s rejections, but issued its own new grounds of rejection over all pending claims, A294-306, i.e., a 35 U.S.C. § 103(a) rejection based on prior art Burrows submitted detailing changes made by the Airlines Reporting Corporation (ARC) to its rules covering how travel agents should save records of airline tickets. A304-305.

In response to the Board’s new grounds of rejection, Burrows requested that prosecution be reopened, as it ultimately was, so he could submit new evidence and arguments. A309-A338. The examiner maintained the Board’s rejection of the claims as obvious in view of ARC. A340-350. Burrows again appealed (A360-361) and the examiner answered (A445-452). On September 6, 2006, the Board issued a second decision (Board Decision II), which affirmed the examiner’s final rejection of all claims as obvious in view of ARC. A1-11. This appeal followed.

¹ Citations to Appellant’s Corrected Brief appear herein as “Br. at ____” and citations to the Joint Appendix appear as “A____.”

III. STATEMENT OF THE FACTS

A. The Claimed Invention: A Method for Electronically Generating, Storing, and Retrieving Airline Ticket Agency Coupon Data

Conventionally, airline tickets were generated on a computer and printed on paper and included three components: (i) the actual ticket the passenger presents to the airline at the time of flight (the “flight coupon”); (ii) a receipt (generally resembling the ticket) for the passenger (the “passenger coupon”); and (iii) a receipt (also resembling the ticket) for the travel agent (the “agent coupon”), which was generally stored for at least two years. A171 (mentioning the three parts, or “coupons,” associated with airline tickets); A64 (explaining the two-year saving requirement). The last document (iii), referred to in the industry as the “agent coupon,” is important to this appeal.

Burrows’ claims are drawn to a method and apparatus for electronically storing the agent coupons. A397 (claim 1). Claim 1, as presented to the Board by Burrows, is representative and reads as follows:

1. A method for electronically generating, storing, and retrieving airline ticket agency coupon data, comprising the steps of:

[(a)] generating agent coupon data simultaneously with the printing of an airline ticket;

[(b)] transmitting and storing said agent coupon data electronically to and in data storage apparatus;

[(c)] providing each agent coupon data with an identifier;

[(d)] storing said agent coupon data in a director/directory/image file arrangement; and
[(e)] retrieving said electronically stored agent coupon data and printing the same in the format of an agent coupon.

A397 (limitation-identifying letters added).¹

In Burrows' claimed invention, rather than saving a hard copy, the agent coupon data is electronically saved, retrieved, and printed. Claim 1 specifies that when that data is saved, it may be saved in an "image file arrangement." A397. Claim 1 further specifies that when that data is later printed, it is printed "in the format of an agent coupon." Taking the claim sequentially, it is a method of creating, storing, and retrieving coupon data. The coupon data is: (a) created or generated; (b) stored electronically; (c) provided with an identifying address; (d) stored in an image file arrangement; and (e) later retrieved and printed. Claim 1 places no limitation on the storage media used to save the data, but merely requires that it be electronically transmitted and stored in a data storage apparatus.

Id. As examples of a "data storage apparatus" Burrows' specification lists

¹ The Director notes that while the Board's version of claim 1, A1-2, matches the version presented by Burrows, A397, it appears that the final words of claim 1, as amended by Burrows in July, 2003, should be: "in a format of an agent coupon." A159 (emphasis added); see also A295 (Board Decision I). Because the slight difference in wording ("a format" versus "the format") is irrelevant to the issues in this appeal, the Director will refer to the language used by Burrows and the Board in Board Decision II.

“hard drives” and “CD ROM disks.” See A33-34; A36; A41; A43 (originally filed claims 2 and 3).

B. The Prior Art

The Board rejected all claims under 35 U.S.C. § 103(a) in view of (i) the conventional airline ticket generation method and (ii) ARC. A2.

1. The Conventional Airline Ticket Issuing Method

There is no dispute in this case about the state-of-the-art airline ticket issuing method used in the late 1990s. Travel agents generated airline tickets with a computer and then printed them, including the “agent coupons,” on a printer. Br. at 22. According to Burrows’ specification, “an agent coupon contains data associated with an issued airline ticket.” A30. That data includes the passenger’s name, airline, flight date and time, departure and arrival locations, etc. Id. Thus, in the conventional method, the agent coupon served as a record of the ticket-issuing transaction. In short, travel agents conventionally generated airline tickets and agent coupons on computers, printed them, and then saved the agent coupons in hard-copy form.

2. ARC

ARC, i.e., the Airlines Reporting Corporation, is an entity formed by the airline industry to regulate independent travel agents. Among the many obligations ARC has historically placed on travel agents are those related to

the saving of agent coupons. A64 (1995 version of Section 70.0 of ARC's "Industry Agents' Handbook"). Conventionally, ARC required agents to save hard copies, or in some circumstances microfiche, of their agent coupons for at least two years. See id. at col. 2, ¶ 4. Those archived agent coupons were primarily used by ARC's fraud prevention investigators when investigating the theft or fraudulent use of airline tickets. See id. at col. 2, ¶ 3. ARC's requirement to save the agent coupons is distinct from any similar duty to save documents that might be required by governmental or tax authorities. A79 at col. 2, ¶ 4.

In 1999-2000, ARC began to move away from its hard-copy requirement to a more flexible system that allowed agents to store their agent coupons in ways that took advantage of contemporary storage methods, e.g., computer/electronic storage. That transition was documented in various ways, including the minutes of public meetings, press releases, and trade publication articles.²

² When referring to those documents, the Board, Burrows, and the examiner have used various terms, "ARC," A2; "the disclosures of ARC," Br. at 13; or "the ARC documents," id. None of those terms are specifically limited to any particular set of references in the prosecution history. Instead, those terms refer to all of the various documents in the prosecution history describing ARC's transition away from the hard-copy requirement. The Director will use the "ARC" label to collectively refer to the various prior art references in the record documenting ARC's transition away from the hard-copy storage requirement.

ARC teaches the details of the transition away from the hard-copy storage requirements. Prior to meetings held in 1999, “ARC had been asked to approve the storage of agent documents in formats other than paper or microfilm/fiche.” A74 (minutes of the Joint Advisory Board–Agent Reporting Agreement (JAB-ARA) meeting held October 27, 1999). In a September 1999 meeting, ARC’s Travel Distribution Task Force considered the elimination of paper agent coupons and discussed an upcoming change that would allow accredited agents to store agent coupons on optical disc rather than in paper form. A70.

Beyond those minutes from various meetings, the new storage plans were announced in an October 1999 press release:

As a further reflection of the increasing opportunities associated with the electronic integration of the travel industry, ARC management presented JAB-ARA with draft text approving various media for electronic storage of agent sales reports and supporting documents. This provides an alternative means for meeting ARC’s requirement for a minimum of two years document retention.

A76, ¶ 2 (emphasis added).

ARC implemented those changes in 2000, in a revised version of its Industry Agent Handbook (IAH), Section 70.0. A79. That revised section covers the manner in which agents must save “all supporting documents (i.e., the agent coupons, [etc.]).” Id.

The IAH specifies:

As an alternative to maintaining the . . . supporting documents in paper format, an Agent may, upon prior written notice to, and written approval by ARC, maintain the required documents on microfiche/film or on an optical storage medium as specified below, under the following conditions.

- (1) . . . Certain non-volatile storage medium, such as CD-ROMs, optical disks, DVDs, and laserdiscs, may be determined to be acceptable storage media. . . .
- (3) A functional reader and copier for microfilm/fiche (and a PC and printer for use with an optical storage medium), which allows for the viewing and reproduction of . . . all supporting documents, must be available . . . at the site where the . . . optical copies are stored and maintained.
- (4) The records which are stored optically . . . must be direct, complete, and accurate reproductions of the original sales reports, supporting documents, [etc.].
- (5) . . . Images stored optically also must be retrievable by agency code number, sales period ending date, ticket number and stock control number.

A79 (original emphasis removed, new emphasis added).

C. The Board's Decisions

1. Board Decision I

In its first decision, the Board reversed the examiner's rejections of all claims under 35 U.S.C. § 102(f) as invented by another, i.e., ARC, and under 35 U.S.C. § 103(a) as obvious in view of U.S. Patent No. 5,521,966 ("Friedes") and one particular ARC document. A298-301. As to the section 103(a) rejection, the Board agreed with Burrows that Friedes was directed to

a specific method of direct electronic ticket sales by the airlines themselves, and as such, was not properly analogous to the specific ARC document that regulated ticket sales by travel agents. A302-03. As to the section 102(f) rejection, the Board concluded that the examiner's reading of ARC included some speculation. Specifically, the Board explained that ARC's teaching that agent coupons "should" be stored optically was not a sufficient anticipatory disclosure of actual electronic storage. A299.

Despite its reversal of the examiner's section 102(f) rejection, the Board agreed with, and incorporated, the examiner's findings regarding ARC's teachings, except for electronic storage of coupon data. Based on those findings, the Board concluded that electronic storage of the coupon data would have been obvious because it was well known to store image data in electronic form, e.g., as a facsimile, when Burrows' application was filed, and because of the "teachings in ARC that coupon data should be stored in optical form." A304. Thus, the Board issued its own rejection of all the claims under 35 U.S.C. 103(a) as obvious in view of ARC. Although the Board did not rely on any secondary references beyond ARC in making its rejection, it did support its finding that electronic storage of "image data" was well known by making reference to "facsimile transmission" and "multimedia network transmission." Id.

Prosecution was reopened after Board Decision I. Burrows did not attempt to amend his claims to overcome the Board's rejection, but instead submitted additional arguments and evidence in opposition to the obviousness rejection. In response, the examiner maintained the Board's rejection and responded to Burrows' arguments. A340-46. Burrows appealed.

2. Board Decision II

In its second decision, the Board affirmed the rejection of all claims in view of ARC and further elaborated on its earlier analysis in light of Burrows' ongoing arguments. As he had done before the examiner, Burrows continued to argue that the obviousness rejection confused the manner of storage, i.e., electronic versus optical, with what was being stored, i.e., an image versus data. A6. Thus, Burrows argued that there was a distinction between saving the data printed on an agent coupon, e.g., the passenger's name, and saving an image of the coupon showing that same data. In response, the Board explained that because the coupon images contain the data with which Burrows is concerned, saving the image of the coupon necessarily includes saving the data on the coupon. In the Board's words:

When an airline ticket is printed for a customer, the data associated with that ticket must have been simultaneously generated in order to print the airline ticket. ARC allows an agent coupon that is representative of that transaction to be

stored as an optical image of the transaction. That optical image contains data that can be used to verify the details of the transaction. . . . [Burrows'] argument that there is difference between image and data fundamentally misunderstands that an image can also convey data.

A8-9.

The Board also rebutted Burrows' allegations that its finding concerning facsimile and multimedia transmission were misplaced, and that ARC actually taught away from the claimed invention. Regarding facsimile machines, the Board explained that its reference to facsimile and multimedia transmission was merely to support its finding that electronic storage and transmission of image data was well known in the art. A10. As to Burrows' teaching-away argument, the Board explained that ARC's prohibition of certain types of storage was not a "teaching away," but instead was merely a regulatory preference of one manner of storage over another. A9. Accordingly, the Board sustained the rejection of all pending claims in view of ARC. A11.

IV. SUMMARY OF ARGUMENT

Burrows broadly claims a method for electronically generating, storing, and retrieving airline ticket information from computer storage. Not only was such a method generally known in 2001 (given that airline tickets and all sorts of other forms were generated and printed using computers that

necessarily included storage), but ARC directly teaches that airline ticket information appearing on agent coupons should be saved on a computer's optical memory, i.e., CD ROM discs.

Specifically, ARC teaches that travel agents, beginning in 2000, were permitted to forego the conventional practice of saving hard copies of their agent coupons. Instead, agents were permitted to save agent coupons on optical media, like CD ROM discs, for later retrieval and printing. Because the agent coupons necessarily contain the agent coupon data, saving images of those coupons also saves the agent coupon data.

Burrows' arguments, most of which are directed to the distinction he perceives between the types of data stored in his invention as compared to what is stored by ARC, fail for multiple reasons. First, Burrows has not explained why his claims as written do not expressly cover the storage of agent coupon images, considering the claimed "image file" storage arrangement. Despite Burrows' repeated references to a "database," that term does not appear in the claims, which only require that the agent coupon data be electronically saved and later retrieved and printed. Second, Burrows has not amended his claims to limit the data stored to individual database fields, e.g., name, flight time, etc., and therefore they do not preclude storing data representing the image of the agent coupon itself.

Rather, Burrows' claims broadly encompass "agent coupon data," which his specification describes as the data on an agent coupon associated with an airline ticket. ARC's method necessarily stores the very same data—if it did not, ARC's method would not work. Third, Burrows' argument that ARC "teaches away" from the claimed invention is incorrect because the very focus of ARC is the storage of the agent coupons, and thus the storage of the data contained on those coupons. Moreover, because the claims expressly encompass the storing of data as an image, Burrows' teaching away argument is not commensurate in scope with his invention as claimed.

Finally, the Board's reference to an artisan familiar with documents known to the entire airline travel industry sufficiently establishes the level of skill in the art. Further, Burrows has not explained why the Board's obviousness conclusion would be any different if some other particular level of skill were found. Thus, none of Burrows' arguments demonstrate reversible error by the Board.

V. ARGUMENT

A. Standard of Review

Burrows has the burden to show the Board committed reversible error. In re Caveney, 761 F.2d 671, 674 (Fed. Cir. 1985). Obviousness is a legal question based on underlying fact findings. See, e.g., In re Mayne, 104 F.3d 1339, 1341 (Fed. Cir. 1997). What a reference teaches, including whether it teaches toward or away from the claimed invention, is a question of fact. Para-Ordnance Mfg., Inc. v. SGS Importers Int'l, Inc., 73 F.3d 1085, 1088 (Fed. Cir. 1995). In addition, the inherent teaching of a prior art reference is also a question of fact which arises both in the context of anticipation and obviousness. In re Napier, 55 F.3d 610, 613 (Fed. Cir. 1995).

This Court upholds the Board's factual findings unless they are unsupported by substantial evidence. In re Gartside, 203 F.3d 1305, 1316 (Fed. Cir. 2000). Substantial evidence "is something less than the weight of the evidence but more than a mere scintilla of evidence," In re Kotzab, 217 F.3d 1365, 1369 (Fed. Cir. 2000), and "means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion," Consol. Edison Co. v. NLRB, 305 U.S. 197, 229 (1938). Further, if "the evidence in [the] record will support several reasonable but contradictory conclusions,"

then this Court “will not find the Board’s decision unsupported by substantial evidence simply because the Board chose one conclusion over another plausible alternative.” In re Jolley, 308 F.3d 1317, 1320 (Fed. Cir. 2002).

Claim construction is a question of law reviewed de novo on appeal. Cybor Corp. v. FAS Techs., Inc., 138 F.3d 1448, 1454 (Fed. Cir. 1998) (en banc). Since during prosecution claims must be given their “broadest reasonable interpretation,” this Court reviews the Board’s interpretation of disputed claim language to determine whether it is “reasonable” in light of all the evidence before the Board. In re Hyatt, 211 F.3d 1367, 1372 (Fed. Cir. 2000); In re Zletz, 893 F.2d 319, 321-22 (Fed. Cir. 1989); In re Morris, 127 F.3d 1048, 1055 (Fed. Cir. 1997).

B. Burrows’ Claimed Method for Electronically Generating, Storing, and Retrieving Airline Ticket Coupon Data would have been Obvious in view ARC

1. Electronically Generating and Printing Airline Ticket Data was Well Known in the Airline/Computer Art in 2001

In his opening brief, Burrows admits that it was well known in the prior art to issue airline tickets with a computer and then print them, along with “agent coupons,” on a printer. Br. at 22. According to his specification, “an agent coupon contains data associated with an issued airline ticket.” A30. That data includes the passenger’s name, airline, flight

date and time, departure and arrival locations, etc. Id. Thus, an agent coupon serves as a record of the ticket-issuing transaction. In order to comply with contractual obligations mandated by ARC, as opposed to any technical limitations on data storage, agents saved the hard copies of their agent coupons for at least two years. A64. In short, travel agents generated airline tickets and agent coupons on computers, printed them, and then physically saved the agent coupons, e.g., in a filing cabinet. Burrows' alleged invention, essentially, is to electronically save those same coupons, e.g., in a computer's storage device, so that they can be retrieved and printed later. In other words, Burrows seeks to patent: (a) storing computer generated information in a computer, and (b) printing it out later.

2. ARC Teaches that Travel Agents Using the Conventional Method Could Store Airline Ticket Data in Computer Storage Devices

In response to requests from travel agents, ARC relieved agents from the need to store hard copies of agent coupons. A74. ARC teaches that, beginning in 2000, agents were permitted to save images of agent coupons optically, e.g., on CD ROM discs, DVDs, etc. A70, A79. Importantly, ARC does not itself teach an advancement in technology, nor does it document any previous technological shortcoming, it merely documents an industry's adoption of existing electronic storage techniques. The optical forms of

storage permitted by ARC in 2000 were known years before Burrows' 2001 filing date. A350 (1997 "Computer Dictionary" describing CD ROM data storage).

3. ARC and the Known Airline Ticket Issuing Methods Teach Every Limitation of Representative Claim 1, Rendering That Claim Obvious

Representative claim 1 recites:

1. A method for electronically generating, storing, and retrieving airline ticket agency coupon data, comprising the steps of:

[(a)] generating agent coupon data simultaneously with the printing of an airline ticket;

[(b)] transmitting and storing said agent coupon data electronically to and in data storage apparatus;

[(c)] providing each agent coupon data with an identifier;

[(d)] storing said agent coupon data in a director/directory/image file arrangement; and

[(e)] retrieving said electronically stored agent coupon data and printing the same in the format of an agent coupon.

A397 (limitation-identifying letters added).³ Each of the limitations labeled (a)-(e) is either taught by, or would have been obvious in view of, the ARC references.

³ The Board focused its decision on "[r]epresentative claim 1," A1, and Burrows has not separately argued the patentability of any claim on appeal. Thus, claim 1 is considered representative of all claims on appeal. See In re Dance, 160 F.3d 1339, 1340 n.2 (Fed. Cir. 1998) (explaining that all claims stand or fall together where appellant does not separately argue the merits of individual claims).

a. “generating agent coupon data simultaneously with the printing of an airline ticket”

As to limitation (a), i.e., the “generating agent coupon data” step, the Board found that “[w]hen an airline ticket is printed for a customer, the data associated with that ticket must have been simultaneously generated in order to print the airline ticket.” A8. In other words, the conventional method of issuing airline tickets necessarily included simultaneous generation of “agent coupon data.” Further, the Board’s finding is supported by Burrows’ specification, which explains that the “agent coupon contains data associated with an issued airline ticket.” A30. Because the very purpose of the agent coupon is to provide a record of the issued airline ticket, the conclusion that the agent coupon data was produced along with the airline ticket is inescapable. Moreover, Burrows confirms this fact in his opening brief by explaining that in the conventional prior art method, the agent coupon was printed “along with” the airline ticket. Br. at 28.

b. “transmitting and storing said agent coupon data electronically to and in data storage apparatus”

The bulk of Burrows’ arguments are directed to this limitation, i.e., the “transmitting and storing” agent coupon data step. Because ARC is primarily concerned with the storage media per se and not necessarily the mechanics of storing, it is not specific as to the manner in which the storage

was conducted, i.e., electronically or otherwise. See, e.g., A79 (“an Agent may . . . maintain the required documents on . . . an optical storage medium”); id. (“supporting documents must be copied to . . . a non-magnetic optical medium”); A169 (“Effective immediately, [some] agencies may print the agent’s coupon on plain paper or capture the image on optical media such as a CD-ROM.”) (emphasis added). While ARC uses terms like “capture” or “copy” in connection with saving computer generated data on CD ROM storage devices that inherently suggest electronic communication and storage, and while there is no dispute that computers were commonly used in the late ’90s to issue tickets and print coupons—a process necessarily done electronically—the Board found that the “electronic” limitation nevertheless would have been obvious. The Board specifically found that it was well known to transmit data representing images of documents electronically and explained that its finding was supported by the fact that facsimile and multimedia transmission were well known to electronically store and transmit image data. See A304; A10.

Regarding the particular information stored, claim 1 refers specifically to “agent coupon data.” Burrows’ specification identifies “agent coupon data” as the data contained on an agent coupon associated with an airline ticket, e.g., the passenger’s name, travel date, airline, etc. A30-31. Because

agent coupon data is contained on the agent coupon, saving an image of the coupon necessarily saves the data contained on it. As the Board reasoned, saving a “coupon image” is similar to saving an image of a canceled check—doing so necessarily preserves the data written on that check. A8.

Observing that saving an image of the agent coupon may also save information beyond the agent coupon data itself, i.e., the layout and arrangement of the data on the coupon, does not help Burrows. Claim 1, which uses the term “comprising” is open-ended, and includes no language that prohibits the saving of an image. See Genentech, Inc. v. Chiron Corp., 112 F.3d 495, 501 (Fed. Cir. 1997) (explaining that “comprising” in a claim means that, while the recited elements are essential, others may be added without departing from the scope of the claim). Despite all Burrows’ efforts to distinguish saving an image from saving data, one need not even look beyond the language of claim 1 to confirm that saving an image is encompassed by the claim. Claim 1 expressly states that the agent coupon data may be stored in an “image file arrangement.” A397. Likewise, Burrows’ specification explains that “[t]he data . . . to be stored can be transmitted for example, in image format.” A36.

If what Burrows is really arguing is that the data he saves is just the data in each field, in a text-searchable “database,” this is not what his claims

recite. Despite his repeated references to “databases,” claim 1 does not include that term, nor any other narrowing language that would preclude image storage from its proper scope. All that claim 1 requires is that the agent coupon data be electronically saved so that it can later be retrieved and printed “in the format of an agent coupon.” A397. Claim 1 clearly associates “agent coupon data” with all of the data on an agent coupon, and not with individual pieces of data. In other words, the claim does not specify that individual fields, e.g., passenger name, be searchable, manipulated, or sorted in any way suggestive of a database. Thus, Burrows’ claims are not limited to “databases.” See Zletz, 893 F.2d at 321 (explaining that during prosecution it is particularly important not to read limitations into the claims).

Finally, the nature and location of the data storage does not serve to distinguish the claimed invention over the prior art. Burrows’ specification discloses both optical media, in the form of CD ROM discs, and magnetic media as possible means of storage. See A33-34 (explaining that data can be stored on a hard drive and on a CD ROM disc); A36 (“electronic data storage apparatus . . . can . . . comprise a computer having a hard drive and CD-ROM capability”); A38 (“the data can be simultaneously stored on both a hard disk and a CD”); A43 (dependent claims 2 and 3, which alternatively

limit claim 1 with “compact disk” and “hard drive” storage steps, respectively). In concert with Burrows’ specification, the ARC references disclose both magnetic and optical storage media, e.g., computer hard drives and CD ROM discs, but explain that agents should only use optical memory that cannot be overwritten. See A79.⁴

c. “providing each agent coupon data with an identifier”

With respect to the “identifier” limitation Burrows’ specification explains:

The agent coupon data is given an identifier designation that will allow subsequent ease of retrieval. For example, the identifier can comprise the ticket number.

A40. ARC teaches precisely the same thing. In its Industry Agent Handbook, ARC specifies that agent coupon data must be accessible by way of various identifiers, including ticket number:

All stored records must be indexed by sales period ending date so as to be readily accessible to an ARC representative or a carrier representative. Images stored optically also must be retrievable by agency code number, sales period ending date, ticket number and stock control number.

A79, col. 2, ¶ 2 (emphasis added).

⁴ The optical media preferred by ARC, e.g., CD ROM discs, are not referred to as “optical” storage because they store light or images, but because the data they store is accessed optically, as opposed to magnetically. See A350 (defining “compact disc” as a medium for storing data accessed optically with high intensity light).

d. “storing said agent coupon data in a director/directory/image file arrangement”

As to the “arrangement” of the stored agent coupon data limitation, the specification does not appear to specifically define the claimed “director/directory/image file arrangement,” nor is it clear whether those terms separated by slashes are alternatives. The specification does generally describe a method of storage where the various stored records, i.e., individual agent coupon images where an “image file arrangement” is used, can be accessed by their identifiers. A36-37. Similarly, ARC teaches that the agent coupons can be saved as images, and that those images must be accessible using various specified identifiers, e.g., agency code number, stock control number, ticket number, etc. A79. Such an arrangement necessarily meets the claimed file arrangement as generally described in the specification.

e. “retrieving said electronically stored agent coupon data and printing the same in the format of an agent coupon”

Finally, the “retrieving and printing” the agent coupon data limitation plainly requires that the agent coupon data be retrieved and printed in the format of an agent coupon. Such retrieval and printing is taught by ARC. A79 (requiring agents to have a computer and printer “which allow[] for the viewing and reproduction” of the agent coupons):

The following chart summarizes each limitation of claim 1's "method for electronically generating, storing, and retrieving airline ticket agency coupon data" as found in the ARC references or as found obvious or inherent by the Board:

Claim 1	The ARC References
(a) generating agent coupon data simultaneously with the printing of an airline ticket;	<u>see, e.g.</u> , A8 (Board finding that generating data inherently occurs when ticket is printed); Br. at 28 (admission that it was known to print agent coupon "along with" the airline ticket);
(b) transmitting and storing said agent coupon data electronically to and in data storage apparatus;	<u>see, e.g.</u> , A79 ("documents must be copied to . . . [an] optical medium"); Board found it was well known to transmit image data electronically and therefore obvious to store agent coupon data electronically, A304, A10;
(c) providing each agent coupon data with an identifier;	<u>see, e.g.</u> , A79 (specifying identifiers by which saved coupons must be retrievable);
(d) storing said agent coupon data in a director/directory/image file arrangement; and	<u>see, e.g.</u> , A79 (specifying that the stored information be accurate reproductions, <u>i.e.</u> , that they be images);
(e) retrieving said electronically stored agent coupon data and printing the same in the format of an agent coupon.	<u>see, e.g.</u> , A79 (specifying the presence of a printer for reproduction of the saved coupons from the stored images).

4. Burrows' Additional Arguments Fail to Overcome the Strength of the Board's Decision

a. The Board Did Not Err in Connection with the Level of Skill in the Art

Burrows also argues that the Board did not make any specific findings as to the level of ordinary skill in the art, and for that reason alone, the Board's findings are clearly erroneous. Br. at 27. To the contrary, the level of skill in the art may come from various sources, including the prior art references themselves. In re GPAC Inc., 57 F.3d 1573, 1579 (Fed. Cir. 1995). Here, the Board's findings were directed to an "artisan" in connection with documents with which every airline travel agent was no doubt familiar, e.g., the handbooks they were required to follow, trade publications outlining future handbook changes, etc. A10. Moreover, because Burrows has failed to show how a more precise definition of the level of skill in the art would have changed the result, he has failed to demonstrate Board error. See In re Huston, 308 F.3d 1267, 1279 n.8 (Fed. Cir. 2002).

b. ARC Does Not "Teach Away" from Claim 1

Finally, Burrows argues that ARC "teaches away" from his invention because ARC "absolutely did not want the agent coupon data to be stored." Br. at 28. As support for that contention, Burrows cites both the 1995 and 2000 versions of ARC's IAH Section 70. A64, A79. Those versions of the

IAH, however, merely require what has already been discussed, i.e., that agents were first required to save hard or microfiche/film copies of their agent coupons, A64, and were later permitted to save those coupons on certain types of computer storage devices such as CD ROM discs, A79. The purpose of saving the agent coupons, in whatever form, is to maintain a record of the airline ticketing transaction. See A64-65. ARC required that the coupons be saved not because their form was pleasing, but because ARC wanted to save the substantive data contained on those coupons about the associated airline ticket. See A30 (Burrows' specification, explaining that agent coupons contain data associated with an issued airline ticket). Thus, ARC does not teach away from saving agent coupon data.

If Burrows' teaching-away argument is directed to ARC's preference of optical storage, e.g., CD ROM discs, over other types of storage, e.g., hard drives, that preference does not amount to a teaching away. Teaching away occurs when a reference teaches that a particular technical approach should not, or cannot, be used. See Para-Ordnance Mfg., Inc. v. SGS Importers Int'l, Inc., 73 F.3d 1085, 1090 (Fed. Cir. 1995). Here, by permitting agent coupon storage on optical media, ARC did not teach that other forms of media should not, or cannot, be used to store images. Rather, ARC's requirement that agents store their coupons on optical media was

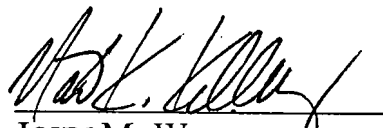
merely a manifestation of the preference that the media used not be of the variety that can be "overwritten." A79, col. 1, ¶ 3. In any case, ARC's preference for optical storage does not help Burrows because his claims are broad enough to encompass CD ROM storage. In short, nothing in ARC teaches away from the invention of claim 1.

VI. CONCLUSION

Since substantial evidence supports the Board's conclusion that Burrows' claimed invention would have been obvious in view of ARC, this Court should affirm the Board's Decision.

Respectfully submitted,

April 10, 2007


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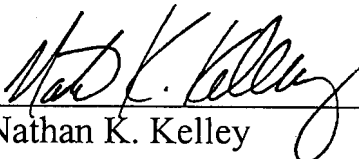
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CERTIFICATE OF SERVICE

I hereby certify that on April 10, 2007, I caused two copies of the foregoing BRIEF FOR APPELLEE DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE to be mailed by Federal Express, addressed as follows:

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